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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,293	03/20/2001	David G. Abdallah JR.	FIRE.P9905052	2286

7590 11/20/2002

John H. Hornickel
Chief Intellectual Property Counsel
Bridgestone/Firestone, Inc,
1200 Firestone Parkway
Akron, OH 44317

EXAMINER

JOHNSTONE, ADRIENNE C

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 11/20/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application N .	Applicant(s)	
	09/812,293	ABDALLAH, DAVID G.	
	Examiner	Art Unit	
	Adrienne C. Johnstone	1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-18, 21-26 and 28 is/are pending in the application.
- 4a) Of the above claim(s) 11-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-10, 21-26 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: |

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DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group IV in Paper No. 6 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 11-18 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made without traverse in Paper No. 6 (see paragraph 1 above).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3-5, 8, 26, and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

To eliminate vague language in claims 3 and 4 applicant should change "the plurality of rows comprise two" to -- the plurality of rows are two -- (otherwise the "plurality" is not further limited). To provide proper antecedent basis in claim 5 applicant should change "elastomer" to -- elastomeric -- . To eliminate vague language in claim 8 applicant should change "row comprises between about 50 to about 600 cords" to -- row has between about 50 to about 600 cords" (otherwise it is not clear whether or not the claim is limiting the number of cords to the recited range); a similar problem exists in claims 26 and 28.

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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6. Claims 2-10, 21-26, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Application 5-294104.

See paragraphs 0005-0021 of the translation. As to claims 8-10, 26, and 28, in the exemplary 1000D/2 polyester cord each strand of 1000 Denier has a cross-sectional area $A = D/p = (\pi d^2/4) = 0.082 \text{ mm}^2$, so the diameter d of each strand is about 0.32 mm which results in a cord diameter of about $2 \times 0.32 \text{ mm} = 0.64 \text{ mm}$; the exemplary cord end count of 55 cords per 50 mm gives for each row an end count of 27.5 cords per 50 mm (0.55/mm) for a cord spacing in each row of $10.55 = 1.8 \text{ mm}$; in the exemplary tire size of 185/60R14 the circumference of the flat carcass ply before expanding into the finished tire is about the same as circumference of the rim (14 inches = 356 mm), so the cord spacing in each row of 1.8 mm around a 356 mm circumference results in $356 \text{ mm}/1.8 \text{ mm} = 198$ cords per row, well within the broadly claimed range of about 50 to about 600 cords per row. As to claim 7, the close structural correspondence (radial passenger tire with cord diameter, row spacing, and number of cords per row in the claimed ranges) between the carcass ply in the JP '104 tire and the claimed tire provide a reasonable basis for inferring that the JP '104 carcass ply would also meet the claimed broad carcass ply width of about 150 mm to about 250 mm, therefore burden shifts to applicant to show lack of inherency (see the case law in MPEP 2112 and 2112.01).

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 8-10, 26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Application 5-294104.

See paragraph 6 above: it would have been obvious to one of ordinary skill in the art to provide such conventional carcass cord count per row in the above tire. It should be noted that

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applicant did not challenge the examiner's position in the previous Office action that conventional carcass cord counts per row in such passenger radial tires would fall within the claimed range, therefore this is taken as admitted prior art as per MPEP 2144.03.

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Application 5-294104.

See paragraph 6 above: it would have been obvious to one of ordinary skill in the art to provide such conventional radial passenger tire carcass ply width in the above tire. It should be noted that applicant has not asserted any novelty for this feature in the original disclosure.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adrienne C. Johnstone whose telephone number is (703)308-2059. The examiner can normally be reached on Monday-Friday, 10:00AM-6:30PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Ball can be reached on (703)308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9311 for regular communications and (703)872-9310 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

Adrienne Johnstone
November 16, 2002

Adrienne C. Johnstone
Primary Examiner
Art Unit 1733

A handwritten signature in black ink, appearing to read "Adrienne C. Johnstone", written in a cursive style.